FA/1074/2003 1/8 JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1074 of 2003
To
FIRST APPEAL No. 1078 of 2003

For Approval and Signature:
HONOURABLE MR.JUSTICE ANIL R. DAVE
&
HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to civil judge ?

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PATEL GOVINDBHAI AMBARAM - Appellant(s)
Versus
SPL.LAQ OFFICER & 1 - Defendant(s)

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Appearance :
MR AJ PATEL for Appellant
MR VIPUL PANCHOLI AGP for Defendant(s) : 1,
MR AJAY R MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 14/11/2005

ORAL JUDGMENT **(Per : Hon'ble MR.JUSTICE ANIL R. DAVE)**

This group of Appeals arise from the common judgment and awards dated 8th August, 2001 passed by the learned Joint Civil Judge [SD], Mehsana in Land

Reference Nos. 129 of 1988 to 133 of 1998. The appellants are the claimants in Land Acquisition Case Nos. 512 of 1988/M.

The appellants are the residents of village Adaraj, Taluka-Kadi, District Mehsana. The claimants owned pieces of land at village Adaraj. The said pieces of land were temporarily acquired under Section 35 of the Land Acquisition Act, 1894 [hereinafter referred to as, ?***the Act***?] for exploration by the Oil & Natural Gas Corporation Limited [hereinafter referred to as, ?***the Corporation***?], the acquiring body. For such temporary acquisition, by Award dated 25th August, 1989, the Land Acquisition Officer awarded annual rent of Rs. 110/= per Are. As the appellants were dissatisfied with the compensation awarded by the Land Acquisition Officer, the above referred References were made under Section 35 (3) of the Act.

The said References have been decided by the *impugned* judgment and awards. The learned Civil Judge has determined the market value of the acquired lands considering its fertility, location and potential for

future development. On the basis of such market value arrived at by the learned Civil Judge, the compensation awarded to the claimants has been enhanced to the annual rent of Rs. 350/= per Are. The learned Civil Judge has also awarded interest on the amount of enhanced compensation @ 9% *per annum* from the date of the Reference till the date of realization. Feeling aggrieved, the claimants have preferred the present Appeals.

Learned advocate Mr. Patel has appeared for the appellants-claimants. He has submitted that the claimants do not press for enhancement in the annual rent awarded by the learned Civil Judge but they assail the rate of interest awarded by the learned Civil Judge and the date from which such interest is made payable.

He has submitted that Section 34 of the Act provides for interest @ 9% *per annum* for one year from the date of taking over of the possession of the land and at the rate of 15% per annum from the date of expiry of one year from the date of taking over of the

possession of the acquired land. The interest, therefore, ought to have been awarded at the rate specified in Section 34 of the Act. He has also submitted that such interest shall be made payable from the date of taking over of the possession of the land and not from the date of References. In support of his claim, he has relied upon the judgment of the *Hon'ble* Supreme Court in the matter of ***Brij Behari Sahai vs. State of Uttar Pradesh*** [AIR 1986 SC 1895] and the judgment of this Court in the matter of ***General Manager, Oil & Natural Gas Corporation vs. Special Land Acquisition Officer [***First Appeal No. 3658 of 2001 & other matters :: Decided on 6th November, 2001]. The Appeals have been contested by learned advocates Mr. Pancholi and Mr. Mehta.

We are afraid, we are unable to agree with Mr. Patel. Neither of the judgments relied upon by Mr. Patel holds that the statutory interest specified under Section 34 of the Act shall apply to the compensation payable for temporary acquisition under Section 35 of the Act. Section 34 of the Act is incorporated in Part V of the Act whereas Sections 35 to 37 provide

for temporary occupation of the land and are incorporated in Part VI of the Act. Section 34 of the Act reads as under :

> ?**34.Payment of interest-When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of nine per centum per annum from the time of so taking possession until it shall have been so paid or deposited: Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.**?

The language of Section 34 of the Act is clear and unambiguous. It provides for payment of interest on the amount of compensation determined under the previous provision of the Act i.e on the compensation awarded for acquisition of land under Part II of the Act. Section 35 of the Act provides for acquisition for temporary occupation of land and the payment of compensation for such temporary occupation. The same, however, does not specifically provide for payment of interest on such compensation. Thus, though the Legislature in its wisdom made it mandatory for

payment of interest at the specified rate over the amount of compensation for the land acquired under Part II of the Act, it did not make corresponding provision in case of temporary occupation of land. In our view, therefore, the provisions contained in Section 34 of the Act shall not apply to the compensation awarded under Section 35 of the Act. We are of the opinion that in case of compensation awarded under Section 35 of the Act, the award of interest shall be discretionary and shall be governed by the principles governing exercise of judicial discretion and the ordinary law for award of interest.

In the present case, the learned Civil Judge has in its discretion awarded interest @ 9%. There is nothing on the record to show that the rate of interest awarded by the learned Civil Judge is inadequate. We, therefore, do not interfere with the rate of interest awarded by the learned Civil Judge. As to the date from which the interest has been awarded, we do agree that such interest shall become payable from the date on which the annual rent became

payable till the date of actual payment. The impugned Awards of the learned Civil Judge, therefore, require to be modified to that extent.

In course of hearing of these Appeals, we have noticed quite a few disturbing facts. As recorded hereinabove, the lands in question were acquired by the Corporation for temporary occupation as far back as in the year 1988. We are informed that in neither of the pieces of land so acquired, the Corporation has struck the oil. *Nevertheless*, the Corporation has continued the temporary occupation for last seventeen years or more. We feel that continued occupation of the Corporation is either collusive or is the result of sheer negligence on the part of the Corporation-a State as envisaged by *Article 12* of the Constitution. We do trust that the concerned authorities in the Corporation will do the needful in the matter. We have also noticed that for computing annual rent of the lands acquired, the learned Civil Judge has adopted the principles of determining the market value for the purpose of permanent acquisition. To us, it appears that the annual rent has been determined by the learned Civil Judge on the

principles not applicable in case of temporary occupation of land. As the State Government as well as the Corporation has acquiesced in the awards passed by the learned Civil Judge, we do not interfere with the same.

In view of the above discussion, the Appeals are partly allowed. The appellants shall be entitled to interest @ 9% *per annum* on the amount of annual rent on and from the date such annual rent became payable till the date the same were paid.

The Appeals shall stand allowed to the aforesaid extent. The parties shall bear their own cost.

Registry shall maintain copy of this judgment in each Appeal.

{Anil R. Dave, J.} {Miss R.M Doshit, J.}

*siji**